

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Crim. No. 1:05-cr-0405

v.

DARYL DENNISON : Judge Sylvia H. Rambo

M E M O R A N D U M

Before the court is Daryl Dennison's *pro se* motion filed under 28 U.S.C. § 2255 to vacate or correct a sentence pursuant to *Johnson v. United States*, 135 S.Ct. 2551 (2015). (Doc. 168.) *Johnson* held that the residual clause of the Armed Career Criminal Act ("ACCA") was unconstitutionally vague and that increasing a defendant's sentence under the residual clause denies due process of law.

Dennison, however, was not sentenced under the ACCA. He was charged under 21 U.S.C. § 841(a)(1). The guideline for that offense is USSG § 2D1.1. Dennison was accountable for at least 50 but less than 150 grams of cocaine, which resulted in a base offense level of 32. Because the offense involved a dangerous weapon, a two level increase was required, giving him an offense level of 34. This offense level was greater than the career offender guideline of 32, thus, the offense level of 34 was used. (*See* Presentence Report, p. 4 ¶ 27).

The *Johnson* case is not applicable to Daryl Dennison. The motion will be denied. An appropriate order will issue.

s/Sylvia Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: November 7, 2016